



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0134; FRL-9957-58-Region 5]

Air Plan Approval; Wisconsin; NO_x as a Precursor to Ozone, PM_{2.5}

Increment Rules and PSD Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to Wisconsin's state implementation plan (SIP), revising portions of the State's Prevention of Significant Deterioration (PSD) and ambient air quality programs to address deficiencies identified in EPA's previous narrow infrastructure SIP disapprovals and Finding of Failure to Submit (FFS). This SIP revision request is consistent with the Federal PSD rules and addresses the required elements of the fine particulate matter (PM_{2.5}) PSD Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) Rule. EPA is also approving elements of SIP submissions from Wisconsin regarding PSD infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 1997 PM_{2.5}, 1997 ozone, 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), and 2012 PM_{2.5} National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed

to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0134. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312) 353-6058, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permitting Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of these SIP submissions?
- II. What action did EPA propose on the SIP submissions?
- III. What comments were received on the proposed rulemaking?
- IV. What action is EPA taking?
- V. Incorporation by reference.
- VI. Statutory and executive order reviews.

I. What is the background of these SIP submissions?

On August 8, 2016, the Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision request to EPA to revise portions of its PSD and ambient air quality programs to address deficiencies identified in EPA's previous narrow infrastructure SIP disapprovals and FFS. Final approval of this SIP revision request will be consistent with the Federal PSD requirements and will address the required elements of the PM_{2.5} PSD Increments, SILs and SMC Rule. Wisconsin submitted revisions to its rules NR 404 and 405 of the Wisconsin Administrative Code. The submittal requests that EPA approve the following revisions to Wisconsin's SIP: (1) Amend NR 404.05(2)(intro); (2) create NR 404.05(2)(am); (3) amend NR

404.05(3)(intro); (4) create NR 404.05(3)(am); (5) amend NR 404.05(4)(intro); (6) create NR 404.05(4)(am); (7) amend NR 405.02(3), (21)(a), and (21m)(a); (8) create NR 405.02(21m)(c); (9) amend NR 405.02(22)(b) and (22m)(a)1. and (b)1.; (10) create NR 405.02(22m)(a)3.; (11) amend NR 405.02(27)(a)6.; (12) amend NR 405.07(8)(a)3m; (13) create NR 405.07(8)(a)3m (Note); and (14) amend NR 405.07(8)(a)5.(Note).

WDNR also requested that this SIP revision supplement the PSD portions of its previously submitted infrastructure submittals, including 1997 PM_{2.5}, 1997 ozone, 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5}.

A. PSD Rule Revisions

1. PM_{2.5} Increments

To implement the PM_{2.5} NAAQS, EPA issued two separate final rules that establish the New Source Review (NSR) permitting requirements for PM_{2.5}: the NSR PM_{2.5} Implementation Rule promulgated on May 16, 2008 (73 FR 28321), and the PM_{2.5} PSD Increments, SILs and SMC Rule promulgated on October 20, 2010 (75 FR 64864). EPA's 2008 NSR PM_{2.5} Implementation Rule required states to submit applicable SIP revisions to EPA no later than May 16, 2011, to address this rule's PSD and nonattainment NSR SIP requirements. This rule requires that the state submit revisions to its SIP, including the identification of precursors for PM_{2.5}, the significant emissions rates for PM_{2.5} and the

requirement to include emissions which may condense to form particulate matter at ambient temperatures, known as condensables, in permitting decisions. EPA published a final approval of a revision to Wisconsin's SIP on October 16, 2014, (79 FR 62008), which included all of the required elements of the 2008 NSR Implementation Rule.

The PM_{2.5} PSD Increments, SILs and SMC Rule required states to submit SIP revisions to EPA by July 20, 2012, adopting provisions equivalent to or at least as stringent as the PM_{2.5} PSD increments and associated implementing regulations. On August 11, 2014, EPA published a finding that Wisconsin had failed to submit the required elements of the PM_{2.5} PSD Increments, SILs and SMC Rule (79 FR 46703).

The PM_{2.5} PSD Increments, SILs and SMC Rule also allows states to discretionarily adopt and submit for EPA approval: (1) SILs, which are used as a screening tool to evaluate the impact a proposed new major source or major modification may have on the NAAQS or PSD increment; and (2) a SMC (also a screening tool), which is used to determine the subsequent level of data gathering required for a PSD permit application for emissions of PM_{2.5}. However, on January 22, 2013, the United States Court of Appeals for the District of Columbia (Court) granted a request from EPA to vacate and remand to EPA the portions of the PM_{2.5} PSD Increments, SILs and SMC Rule PM_{2.5} addressing the SILs for

PM_{2.5} so that EPA could voluntarily correct an error in these provisions. The Court also vacated parts of the PM_{2.5} PSD Increments, SILs and SMC Rule establishing a PM_{2.5} SMC, finding that EPA was precluded from using the PM_{2.5} SMCs to exempt permit applicants from the statutory requirement to compile preconstruction monitoring data. *Sierra Club v. EPA*, 705 F.3d 458, 463-69. On December 9, 2013, EPA issued a good cause final rule formally removing the affected SILs and replacing the SMC with a numeric value of 0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and a note that no exemption is available with regard to PM_{2.5}. See 78 FR 73698. As a result, SIP submittals could no longer include the vacated PM_{2.5} SILs at 40 CFR 51.166(k)(2) and 52.21(k)(2) and the PM_{2.5} SMC must be revised to 0 $\mu\text{g}/\text{m}^3$, consistent with 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c).

2. Ozone

On November 29, 2005, EPA published (70 FR 71612) in the Federal Register the "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2". Part of this rule established, among other requirements, oxides of nitrogen (NO_x) as a precursor to ozone. The final rule became effective on January 30, 2006.

On October 6, 2014, EPA finalized approval of revisions to Wisconsin's SIP that included the identification of NO_x as a precursor to ozone in the definition of regulated NSR pollutant.

See 79 FR 60064.

B. Infrastructure SIP Submittals

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

This specific rulemaking is only taking action on the PSD elements of the Wisconsin infrastructure submittals. Separate action has been or will be taken on the non-PSD infrastructure elements in separate rulemakings. The infrastructure elements for PSD are found in CAA 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J) and will be discussed in detail below. For further discussion on the background of infrastructure submittals, see 77 FR 45992, August 2, 2012.

II. What action did EPA propose on the SIP submissions?

On September 30, 2016 (81 FR 67261), EPA proposed approval of a SIP revision from WDNR requesting EPA to revise portions of its PSD and ambient air quality programs to address PM_{2.5} increment requirements and incorporating NO_x as an ozone precursor. EPA proposed that these revisions were made to meet EPA's requirements for Wisconsin's PSD and NSR program and are consistent with Federal regulations.

EPA proposed that the revisions pertaining to PM_{2.5} increments are consistent with Federal regulations and fully address the requirements of the PM_{2.5} PSD Increments, SILs, and SMC Rule. EPA also proposed that revisions pertaining to NO_x as a precursor to ozone, in conjunction with EPA's October 6, 2014 approval (79 FR 60064), will address all of the PSD requirements of the "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2".

WDNR also requested that this SIP revision supplement the PSD portions of its previously submitted infrastructure submittals. EPA proposed that based on the approval of the PSD related SIP revisions mentioned above and previously approved SIP revisions (see 79 FR 62008, October 16, 2014), EPA is able to fully approve the PSD related infrastructure requirements found in CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for Wisconsin's 1997 PM_{2.5}, 1997 ozone, 2006 PM_{2.5}, 2008 lead, 2008

ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS submittals.

III. What comments were received on the proposed rulemaking?

The comment period for the proposed action associated with today's rulemaking (81 FR 67261) closed on October 31, 2016.

EPA received two supportive comments.

IV. What action is EPA taking?

EPA is approving revisions to Wisconsin's SIP that implement the PM_{2.5} increment requirements and also incorporate NO_x as an ozone precursor. These revisions were made to meet EPA's requirements for Wisconsin's PSD and NSR program and are consistent with Federal regulations. Specifically, EPA is approving the following:

- i) NR 404.05(2)(intro) and (am)
- ii) NR 404.05(3)(intro) and (am)
- iii) NR 404.05(4)(intro) and (am)
- iv) NR 405.02(3) and (21)(a)
- v) NR 405.02(21m)(a) and (c)
- vi) NR 405.02(22)(b)
- vii) NR 405.02(22m)(a)1. and 3., and (b)1.
- viii) NR 405.02(27)(a)6.
- ix) NR 405.07(8)(a)3m and 3m(Note)
- x) NR 405.07(8)(a)5.(Note)

The revisions pertaining to PM_{2.5} increments will fully address the requirements of the PM_{2.5} PSD Increments, SILs, and

SMC Rule and the deficiencies identified in EPA's August 11, 2014, Finding of Failure to Submit. The revisions pertaining to NO_x as a precursor to ozone will, in conjunction with EPA's October 6, 2014 approval, address all of the PSD requirements of the "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2" and stops the Federal Implementation Plan (FIP) clock triggered by the FFS mentioned above (79 FR 46704, August 11, 2014).

EPA is also approving the PSD related infrastructure requirements found in CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for Wisconsin's 1997 PM_{2.5}, 1997 ozone, 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS submittals. This action stops the FIP clock triggered by the disapproval of NO_x as a precursor to ozone for the PSD provisions for the 1997 ozone and PM_{2.5} infrastructure SIPs (77 FR 35870, June 15, 2012). This action requires significant revisions to existing portions of 40 CFR 52.2591. Because there will already be substantial revisions, EPA will also be revising additional portions of 40 CFR 52.2591 that are not related to PSD for clarification or consolidation purposes only. These additional edits will not change the meaning or intent of the original language.

V. Incorporation by reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with

requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

VI. Statutory and executive order reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Lead,
Nitrogen dioxide, Ozone, Particulate matter, Reporting and
recordkeeping requirements, Sulfur oxides.

Dated: December 13, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by adding paragraph (c)(135) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(135) On August 8, 2016, WDNR submitted a request to revise portions of its Prevention of Significant Deterioration (PSD) and ambient air quality programs to address the required elements of the fine particulate matter (PM_{2.5}) PSD Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) Rule and the Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2. Wisconsin submitted revisions to its rules NR 404 and 405 of the Wisconsin Administrative Code.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 404.05 Ambient Air Increments. NR 404.05(2) introductory text; NR 404.05(2)(am); NR 404.05(3) introductory text; NR 404.05(3)(am); NR 404.05(4) introductory text; and NR 404.05(4)(am), as published in the

Register, July 2016, No. 727, effective August 1, 2016.

(B) Wisconsin Administrative Code, NR 405.02 Definitions. NR 405.02(3); NR 405.02(21)(a); NR 405.02(21m), except (b); NR 405.02(22)(b); NR 405.02(22m)(a)1. and 3. and (b)1.; and NR 405.02(27)(a)6., as published in the Register, July 2016, No. 727, effective August 1, 2016.

(C) Wisconsin Administrative Code, NR 405.07 Review of major stationary sources and major modifications – source applicability and exemptions. NR 405.07(8)(a)3m; 405.07(8)(a)3m. Note; and NR 405.07(8)(a)5. Note, as published in the Register, July 2016, No. 727, effective August 1, 2016.

3. Section 52.2591 is revised to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

(a) *Approval.* In a December 12, 2007 submittal, supplemented on January 24, 2011, March 28, 2011, July 2, 2015, and August 8, 2016, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 8-hour ozone NAAQS.

(b) *Approval.* In a December 12, 2007 submittal, supplemented on January 24, 2011, March 28, 2011, July 2, 2015, and August 8, 2016, Wisconsin certified that the State has satisfied the

infrastructure SIP requirements of section 110(a)(2)(A) through (C), (D)(ii), (E) through (H), and (J) through (M) for the 1997 PM_{2.5} NAAQS.

(c) *Approval*. In a January 24, 2011, submittal, supplemented on March 28, 2011, June 29, 2012, July 2, 2015, and August 8, 2016, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2006 24-hour PM_{2.5} NAAQS. We are not finalizing action on (D)(i)(I) and will address these requirements in a separate action.

(d) *Approval*. In a July 26, 2012, submittal, supplemented July 2, 2015, and August 8, 2016, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 lead (Pb) NAAQS.

(e) *Approval and Disapproval*. In a June 20, 2013, submittal with a January 28, 2015, clarification, supplemented July 2, 2015, and August 8, 2016, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 ozone NAAQS. For 110(a)(2)(D)(i)(I), we are approving prong one and disapproving prong two.

(f) *Approval*. In a June 20, 2013, submission with a January 28, 2015, clarification, supplemented July 2, 2015, and August

8, 2016, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 nitrogen dioxide (NO₂) NAAQS.

(g) *Approval.* In a June 20, 2013, submission with a January 28, 2015, clarification, supplemented July 2, 2015, and August 8, 2016, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 sulfur dioxide (SO₂) NAAQS. We are not taking action on the transport provisions in section 110(a)(2)(D)(i)(I), and will address these requirements in a separate action.

(h) *Approval.* In a July 13, 2015, submission, supplemented August 8, 2016, WDNR certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2012 PM_{2.5} NAAQS. We are not taking action on the transport provisions in section 110(a)(2)(D)(i)(I), and the stationary source monitoring and reporting requirements of section 110(a)(2)(F). We will address these requirements in a separate action.

[FR Doc. 2017-02530 Filed: 2/6/2017 8:45 am; Publication Date: 2/7/2017]